Professional Corporations—Recent Developments

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A lengthy, detailed article reviewing legal and tax problems of professional corporations has been withdrawn from this issue of* CALIFORNIA MEDICINE. *Instead, we are presenting a status report which is simply another chapter in a continuing saga.

IN THE JUNE issue of this journal* it was noted that uncertainty as to the tax status of professional corporations was deterring professionals from incorporating, even though the new California statutes permitting incorporation had been in effect for several months. At that time, the Internal Revenue Service was refusing to recognize professional corporations for tax purposes, in spite of repeated defeats in the nation's courts.

In August, the IRS made a public announcement which was widely misinterpreted. This brief announcement stated only that the IRS was conceding that professional corporations should be treated as corporations for tax purposes. A barrage of publicity aimed at professionals by investment houses and others promoting incorporation generally indicated that this statement represented total capitulation by the service. This evaluation did not seem to be supported by the text of the announcement, and those familiar with IRS's traditional hostility toward professional corporations were not so optimistic. It was pointed out that mere recognition of the professional corporation as a taxable entity would not resolve many other tax problems.

Late in October, the Treasury made another announcement. The department, referring to professional corporations as "a loophole," indicated it would seek corrective legislation next year. On 28 October this threat became a reality when the Senate Finance Committee suddenly amended the tax reform bill, already passed by the House, to deny professional corporations the benefits of qualified corporate pension or profit-sharing plans, except to the extent permitted by the Keogh law.

The fate of this amendment may be determined by the time this issue of CALIFORNIA MEDICINE reaches its readers. Adoption will depend upon action by both the Senate itself and by the joint Senate-House conference committee, which resolves differences in the bill as it left the House and as finally amended in the Senate. While the House version of the 1969 tax revision bill did not include the Senate Finance Committee's measure, a similar, more limited proviso was passed by the House. The House bill would have denied usual corporate retirement plans to "Subchapter S" corporations. Subchapter S corporations, which can have no more than ten shareholders, are those which elect to be treated as partnerships for tax purposes. Many professional corporations would have chosen the Subchapter S election, because it benefits those member-shareholders who cannot afford to reduce their flow of available funds.

The House bill was not aimed at professional corporations. It dealt with all Subchapter S corporations, which would include some professional corporations. The Senate amendment is directed specifically at professional corporations. If adopt-

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ed, the law will limit professional corporations, to the same type of retirement plans as are available to self-employed individuals under the Keogh law. Professional corporations will therefore be limited to a maximum deduction of 10 percent of income or $2,500, whichever is less, with respect to contributions made on behalf of shareholder employees. In contrast, other corporations are able to make contributions to qualified plans of approximately 25 percent of employee compensation. This advantage has been the principal selling point to many who have considered incorporation of their practice.

If the professional person's retirement plan is subject to the same restrictions, regardless of whether he is self-employed or becomes the employee of his own corporation, the corporation obviously offers no advantage in this regard. The loss of this major advantage is likely to mean that incorporation will not be beneficial to most practitioners, taking all considerations into account. Incorporation still offers some advantages, and some physicians may find incorporation worthwhile, in view of the facts which pertain to their own practice. The large group may choose incorporation for ease of management. Limited liability for the act of associated physicians may also be an advantage. However, as a practical matter, it should be pointed out that the physician is personally liable for his own malpractice regardless of incorporation, and insurance must be obtained to cover any liability arising from actions of other member physicians, regardless of whether the practice is a partnership or a corporation.

There are also fringe benefits, from a tax standpoint, which only corporations can utilize. These include deductable group term life insurance up to $50,000 per employee; accident and health insurance; and medical or dental reimbursement plans. On the other hand, there are many tax pitfalls which apply only to corporations. Thorough, competent tax analysis is still essential if incorporation remains a consideration. The corporation must also observe legal formalities in the conduct of its affairs. This necessarily involves additional expense, plus the expenditure of additional time and effort by the physician shareholders responsible for the corporation's affairs.

Physicians, lawyers, and other professional persons will continue to seek legislation to correct the many inequities in their tax treatment. It remains to be seen whether professional corporations will be a part of the eventual solution. At the present time, it appears that the Treasury Department's opposition to these corporations justifies continued caution in this area, regardless of the outcome of the Senate amendment denying the benefits of corporate retirement plans.

TEACHING THE EMPHYSEMIC PATIENT TO BREATHE

"The emphysema patient can gain great relief from sensations of dyspnea from his physician's reassurance that he can overcome them when he has them. . . . Patients can overcome dyspnea by deliberately holding back their rate of breathing. The reason for this is that when you breathe rapidly, if you're obstructed, the work of breathing increases far out of proportion to the delivery of oxygen or to the improvement of alveolar ventilation. Simply by voluntarily reducing the rate of ventilation . . . to a slow, prolonged rate—easy, complete total expiration—one can feel the sensation of dyspnea fading away. It takes a little almost hypnotic persuasiveness to teach the patient this, but it works."

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